

ASSEMBLY BILL

No. 210

**Introduced by Assembly Member Nation
(Coauthor: Assembly Member Koretz)**

January 28, 2003

An act to add Section 1365.95 to the Civil Code, and to add Article 4 (commencing with Section 118960) to Chapter 4 of Part 15 of Division 104 of the Health and Safety Code, relating to tobacco.

LEGISLATIVE COUNSEL'S DIGEST

AB 210, as introduced, Nation. Tobacco: dwellings.

(1) Existing law governs the regulation of common interest developments. Existing law provides a cause of action for the enjoinder, abatement, and prevention of a public or private nuisance.

This bill would provide that the drifting, wafting, or blowing of tobacco smoke into the interest of any other person in a common interest development is a nuisance, with specified exceptions. The bill would also prohibit the smoking of any tobacco-related product within any common area in a common interest development. The bill would permit specified persons or entities to assess additional fines or penalties for a violation of these provisions. The bill would also make specified findings and declarations.

(2) Existing law regulates the smoking of tobacco in various public places. Existing law also prohibits the smoking of tobacco in a private residence that is licensed as a family day care home during its hours of operation and in those areas of the facility where children are present.

This bill would prohibit the smoking of tobacco in the indoor and outdoor common areas of multifamily residential housing.

This bill would prohibit, on January 1, 2006, the smoking of tobacco in units of multifamily residential housing, except those units that have been specifically designated by a landlord, property manager, or building owner as units where smoking is permitted. This bill would exempt a person from this requirement who, on December 31, 2005, is living in a unit of multifamily residential housing, but would apply the requirement to that person if he or she subsequently moves to a different housing unit.

This bill would define, for the purposes of these provisions, multifamily residential housing to mean housing that is occupied by more than one family, including both owner- and renter-occupied apartments and condominiums. This bill would provide that any person who violates the requirements of the bill is guilty of an infraction.

By creating a new crime, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that the
2 drifting, wafting, or blowing of tobacco smoke of any kind into the
3 interest of any other person in a common interest development is
4 a nuisance that is injurious to health, indecent and offensive to the
5 senses, an obstruction to the free use of property, and an
6 interference with the comfortable enjoyment of that property.

7 SEC. 2. Section 1365.95 is added to the Civil Code, to read:

8 1365.95. (a) (1) The drifting, wafting, or blowing of
9 tobacco smoke of any kind into the interest of any other person in
10 a common interest development, on more than one occasion in
11 each of two consecutive seven-day periods, is a nuisance, which
12 shall be enjoined, abated, and prevented.

13 (2) There is no cause of action for nuisance pursuant to
14 paragraph (1) if any lease, purchase agreement, restrictive



1 covenant, or declaration or other governing document of any
2 interest of a common interest development contains within that
3 particular document all of the following in writing:

4 (A) That tobacco smoking is permitted in that common interest
5 development.

6 (B) That tobacco smoke may drift, waft, or blow into any
7 interest that is the subject of this writing.

8 (C) That the lessee or owner of that interest has been informed
9 that tobacco smoking is permitted in the common interest
10 development, which may drift, waft, or blow into their particular
11 interest.

12 (D) That the lessee or owner waives any right to a cause of
13 action for nuisance pursuant to this section.

14 (3) Notwithstanding Section 1365.9, a cause of action for
15 nuisance may be brought against the following persons:

16 (A) Any person who commits a nuisance pursuant to this
17 section.

18 (B) Any person who permits or fails to control that nuisance.

19 (C) Any homeowner's association, property management
20 company, landlord, or manager of the common interest
21 development or interest, if any lease, purchase agreement,
22 restrictive covenant, or declaration or other governing document
23 of any interest of that common interest development provides that
24 a particular interest will not be subject to this nuisance, the lessee
25 or owner provides in writing to the homeowner's association,
26 property management company, landlord, or manager of the
27 common interest development or interest a statement that a
28 nuisance has been committed, and the homeowner's association,
29 property management company, landlord, or manager of the
30 common interest development or interest knowingly permits or
31 fails to control that nuisance.

32 (b) No person may smoke a cigarette, cigar, or other
33 tobacco-related product within any indoor or outdoor common
34 area of any common interest development.

35 (c) For a violation of either subdivision (a) or (b), any
36 homeowner's association, property management company,
37 landlord, or manager of a common interest development or interest
38 may assess additional fines or penalties on any person who
39 commits a nuisance pursuant to this section or any person who
40 permits or fails to control that nuisance.



(d) This section does not apply to any common interest development that functions as a hotel, motel, or timeshare, or to any interest of a common interest development that is available for short-term rental, including, but not limited to, a vacation rental or a rental of 30 days or less.

SEC. 3. Article 4 (commencing with Section 118960) is added to Chapter 4 of Part 15 of Division 104 of the Health and Safety Code, to read:

Article 4. Smoking in Multifamily Dwellings

118960. (a) The smoking of tobacco is prohibited in the indoor and outdoor common areas of multifamily residential housing.

(b) On January 1, 2006, the smoking of tobacco is prohibited in units of multifamily residential housing, except those units that have been specifically designated by a landlord, property manager, or building owner as units where smoking is permitted.

(c) For the purposes of this section, “multifamily residential housing” means housing comprised of more than one unit, including both owner- and renter-occupied apartments and condominiums.

(d) Any person who violates this section is guilty of an infraction and shall be punished by a fine of one hundred dollars (\$100) for each violation of this section.

(e) Subdivision (b) does not apply to any person who, on December 31, 2005, is living in a unit of multifamily residential housing, but applies to that person if he or she moves to a different housing unit on or after January 1, 2006.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.